

<b>UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY</b>	
<b>Caption in Compliance with D.N.J. LBR 9004-1(b)</b>  BALLARD SPAHR LLP Leslie C. Heilman Laurel D. Roglen 919 N. Market Street, 11th Floor Wilmington, DE 19801 Telephone: (302) 252-4465 Facsimile: (302) 252-4466 E-mail: heilmanl@ballardspahr.com roglenl@ballardspahr.com  Dustin P. Branch Nahal Zarnighian 2029 Century Park East, Suite 1400 Los Angeles, CA 90067-2915 Telephone: (424) 204-4354 Facsimile: (424) 204-4350 E-mail: branchd@ballardspahr.com zarnighiann@ballardspahr.com  <i>Counsel to ARC BHT-VCMI001, LLC, ARC            ASANDSC001, LLC, ARG FSBROWI001, LLC, ARG            PSALBNM001, LLC, ARG SAABITX001, LLC, Brixmor            Operating Partnership LP, Deutsche Asset &amp; Wealth            Management, EDENS, Fairview Shopping Center, LLC,            Federal Realty OP LP, Heitman, UBS Realty Investors            LLC, and Urban Edge Properties, L.P.</i>	
In re  BED BATH & BEYOND INC., <i>et al.</i> , <sup>1</sup>  <div style="text-align: right;">Debtors.</div>	Chapter 11  Case No. 23-13359 (VFP)  (Jointly Administered)

**REQUEST OF ARC BHT-VCMI001, LLC, ARC ASANDSC001, LLC, ARG  
FSBROWI001, LLC, ARG PSALBNM001, LLC, ARG SAABITX001, LLC, BRIXMOR  
OPERATING PARTNERSHIP, LP, DEUTSCHE ASSET & WEALTH MANAGEMENT,  
EDENS, FAIRVIEW SHOPPING CENTER, LLC, FEDERAL REALTY OP LP,  
HEITMAN, UBS REALTY INVESTORS LLC AND URBAN EDGE PROPERTIES, L.P.  
FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE CLAIMS**

<sup>1</sup> The last four digits of Debtor Bed Bath & Beyond Inc.'s tax identification number are 0488. A complete list of the Debtors in these Chapter 11 Cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is 650 Liberty Avenue, Union, New Jersey 07083.

ARC BHT-VCMI001, LLC, ARC ASANDSC001, LLC, ARG FSBROWI001, LLC, ARG PSALBNM001, LLC, ARG SAABITX001, LLC, Brixmor Operating Partnership, LP, Deutsche Asset & Wealth Management, EDENS, Fairview Shopping Center, LLC, Federal Realty OP LP, Heitman, UBS Realty Investors LLC and Urban Edge Properties, L.P. (the “Landlords”), by and through their undersigned counsel, pursuant to sections 503(b) and 365(d)(3) of title 11 of the United States Code, respectfully file this Request (the “Request”) for an order granting the allowance and payment of Landlords’ administrative expense claims in the amounts set forth herein. In support of this Request, Landlords state as follows:

**I. BACKGROUND**

1. On April 23, 2023 (the “Petition Date”), the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code with the United States Bankruptcy Court for the District of New Jersey (the “Court”), which cases have been jointly consolidated for administrative purposes only (the “Chapter 11 Cases”). The Debtors continue to operate their businesses and manage their properties as debtors and debtors-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108. No trustee or examiner has been appointed in the Chapter 11 Cases.<sup>2</sup>

2. The Debtors lease retail space (the “Premises”) from the Landlords pursuant to unexpired leases of nonresidential real property (individually, a “Lease,” and collectively, the “Leases”) at the locations set forth below.

3. Each Lease is a lease “of real property in a shopping center” as that term is used in Section 365(b)(3). See In re Joshua Slocum, Ltd., 922 F.2d 1081, 1086-87 (3d Cir. 1990).

4. On May 13, 2023, the United States Bankruptcy Court for the District of New Jersey (the “Court”) entered the *Order (I) Setting Bar Dates for Submitting Proofs of Claim, Including Requests for Payment Under Section 503(B)(9), (II) Establishing Amended*

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<sup>2</sup> Unless otherwise specified, all statutory references to “Section” are to 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”).

*Schedules Bar Date, Rejection Damages Bar Date, and Administrative Claims Bar Date, (III) Approving the Form, Manner, and Procedures for Filing Proofs Of Claim, (IV) Approving Notice Thereof, and (V) Granting Related Relief* [Docket No. 584] (the “Bar Date Order”).

5. The Bar Date Order established the deadline for filing requests for payment of administrative claims for counterparties to leases of unexpired leases of non-residential real property—which leases have not been assumed, assumed and assigned, or rejected—as **July 21, 2023**.

6. Under the terms of the Leases, the Debtors are required to make certain payments to the Landlords arising out of their use and occupancy of the Premises. These payments include such items as rent and related charges, common area maintenance obligations, real property taxes, and all other charges imposed by the Leases, including year-end adjustments and reconciliations for charges that the Debtors pay on an estimated basis. The Debtors have not paid all obligations that have arisen or accrued during the post-petition period, and certain amounts remain due and owing for the period from and after the Petition Date. The Landlords are entitled to administrative expense claims for such obligations, as set forth in greater detail on the attached Exhibits 1 – 28, in addition to any indemnity obligations, amounts subject to setoff and/or recoupment, and/or attorneys’ fees.<sup>3</sup>

## **II. RELIEF REQUESTED**

7. Landlords respectfully request that the Court enter an order for allowance and payment of their administrative priority claims in the amounts set forth herein, for payment of obligations arising or accruing under the Leases from and after the Petition Date that remain unpaid, pursuant to Bankruptcy Code sections 365(d)(3), 503(a), 503(b)(1)(A), and 507(a)(2).

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<sup>3</sup> The amounts set forth herein cover amounts that accrued or were billed from the Petition Date through the date of this Request. Landlords further reserve the right to assert additional claims for post-confirmation charges and/or second deadline for filing requests for administrative claims for any charges arising under assumed Leases in the appropriate forum to the extent not paid.

### **III. BASIS FOR THE RELIEF REQUESTED**

8. Section 365(d)(3) provides that a debtor is required to “timely perform all the obligations of the debtor . . . arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected . . . .” 11 U.S.C. § 365(d)(3). *See, e.g., Imperial Beverage Group, LLC*, 457 B.R. 490, 497-500 (Bankr. N.D. Tex. 2011); *In re Appletree Markets, Inc.*, 139 B.R. 417, 419-20 (Bankr. S.D. Tex. 1992). *See also In re Simbaki, Ltd.*, Case No. 13-36878, 2015 BL 97167, \*6 (Bankr. S.D. Tex. Apr. 6, 2015).

9. The majority of courts that have considered the operation of Section 365(d)(3) have arrived at the same conclusion: costs and expenses incurred for post-petition, pre-assumption or rejection performance under an unexpired nonresidential real estate lease must be allowed as an administrative expense regardless of Section 503(b)(1)(A) limitations. *Id.* *See also In re Liberty Outdoors, Inc.*, 205 B.R. 414, 417 (Bankr. E.D. Mo. 1997) (lessor entitled to recover unpaid expenses pursuant to section 365(d)(3) of the Bankruptcy Code regardless of whether such “expenses benefited or preserved the estate”); *In re Worths Stores Corp.*, 135 B.R. 112, 115 (Bankr. E.D. Mo. 1991) (same); *In re S. Lincoln Med. Grp., P.C.*, Case No. BK07-41636-TLS, 2008 WL 506086, at \*2 (Bankr. D. Neb. Feb. 21, 2008) (citing *In re Brewer*, 233 B.R. 825, 829 (Bankr. E.D. Ark. 1999)). Thus, the plain language of Section 365(d)(3) and the relevant case law clearly requires the Debtors’ immediate payment of all rents and related charges that arise post-petition as administrative expenses of these estates.

10. In addition, Section 503(b)(1) provides for an administrative expense claim for “the actual, necessary costs and expenses of preserving the estate. *See* 11 U.S.C. § 503(b)(1). A landlord’s administrative claim under Section 503(b)(1) is equal to the lease contract rate. *In re ZB Co., Inc.*, 302 B.R. 316, 319 (Bankr. D. Del. 2003) (contract rate is presumed to be the fair rental value.). Section 507(a) of the Bankruptcy Code provides that administrative expense claims that are allowed under section 503(b) of the Bankruptcy Code have first priority. *See* 11 U.S.C. § 507(a)(2). The Debtors benefited from the post-petition use

and occupancy of the Premises, including being able to conduct non-ordinary course store closing sales for the direct benefit of themselves and their lenders.

11. On the basis of the foregoing, Landlords respectfully request that the Court enter an order allowing their administrative expense claims in the amounts set forth in the attached Schedule A and accompanying supporting exhibits.

WHEREFORE, Landlords respectfully request that the Court enter an Order: (i) awarding the allowance and payment of the Landlords' administrative expense claims against the Debtors' estates under sections 365(d)(3), 503(a) and 503(b)(1)(A) of the Bankruptcy Code in the amounts set forth herein; and (ii) providing such other relief the Court deems just and necessary.

Dated: July 21, 2023  
Wilmington, Delaware

Respectfully submitted,

/s/ Leslie C. Heilman

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Federal Realty OP LP, Heitman, UBS Realty Investors  
LLC, and Urban Edge Properties, L.P.*

**SCHEDULE A**

<b>Store No.</b>	<b>Landlord Entity</b>	<b>Center</b>	<b>Location</b>	<b>Administrative Claim Amount</b>	<b>Exhibit</b>
0762	ARC BHTVCMI001, LLC	Bison Hollow	Traverse City, MI	\$2,154.47	19
0437	ARC ASANDSC001, LLC	Anderson Station	Anderson, SC	\$16,991.80	23
3038	ARG FSBROWI001, LLC	Fountain Square (BuyBuy Baby)	Brookfield, WI	\$2,567.65	20
0111	ARG PSALBNM001, LLC	Plaza San Mateo	Albuquerque, NM	\$11,020.62	21
0615	ARG SAABITX001, LLC	Shops at Abilene	Abilene, TX	\$1,705.48	22
3105	Arapahoe Crossings, L.P. (Brixmor)	Arapahoe Crossings (BuyBuy Baby)	Aurora, CO	\$90,685.91	1
0049	Brixmor/IA Delco Plaza, LLC	Delco Plaza	Sterling Heights, MI	\$57,567.43	2
3138	Brixmor GA Westminster LLC	Westminster City Center	Westminster, CO	\$55,070.86	3
0133	Brixmor Holdings 6 SPE, LLC	Westridge Court	Naperville, IL	\$69.83	4
3064	Brixmor Holdings 6 SPE, LLC	Westridge Court (BuyBuy Baby)	Naperville, IL	\$12,619.27	5
0029	Deutsche	Crossroads Center	Falls Church, VA	\$10,284.91	24
0032	Deutsche	Deerbrook Mall	Deerfield, IL	\$12,635.21	25
0188	EDENS	Riverview Plaza	Frederick, MD	\$2,873.89	26
0820	Fairview Shopping Center, LLC	Fairview Shopping Center	Goleta, CA	\$6,755.56	27
0810	FR Assembly Square, LLC (Federal Realty)	Assembly Square	Somerville, MA	\$64,489.52	6
0110	Federal Realty OP LP	Barracks Road Shopping Center	Charlottesville, VA	\$94,650.48	7
1077	FR Camelback Colonnade, LLC (Federal Realty)	Camelback Colonnade	Phoenix, AZ	\$83,867.80	8
3022	Chandler Festival SPE LLC (Federal Realty)	Chandler Festival (BuyBuy Baby)	Chandler, AZ	\$70,319.63	9

3001	Congressional Plaza Associates, LLC (Federal Realty)	Congressional Plaza	Rockville, MD	\$2,456.69	10
3010	Federal Realty OP LP	Ellisburg (BuyBuy Baby)	Cherry Hill, NJ	\$43,794.55	11
0053	Federal Realty OP LP	Finely Square	Downers Grove, IL	\$246,096.05	12
3009	Federal Realty OP LP	Finely Square (BuyBuy Baby)	Downers Grove, IL	\$236,050.20	13
0606	Heitman	Surprise Town Center	Surprise, AZ	\$32,565.96	28
3139	206-261 Junction Road Madison Investors LLC (UBS)	Prairie Towne Center (BuyBuyBaby)	Madison, WI	\$977,805.83 <sup>4</sup>	14
0008	Victory Warner Marketplace, LLC (UBS)	Warner Marketplace	Canoga Park, CA	\$4,992.46	15
0160	UE 675 Route 1 LLC (Urban Edge)	The Plaza at Woodbridge	Woodbridge (Iselin), NJ	\$50,010.12	16
3130	UE 675 Route 1 LLC (Urban Edge)	The Plaza at Woodbridge (BuyBuy Baby)	Woodbridge (Iselin), NJ	\$14,762.30	17
0477	Totowa UE LLC (Urban Edge)	Totowa Commons	Totowa, NJ	\$24,044.00	18

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<sup>4</sup> This administrative expense arises as a result of the filing of that certain complaint on July 17, 2023, by TMS Construction, Inc. against Landlord based on a lien claim in the Dane County Circuit Court, Wisconsin, Case No. 2023CV001823 (the “Lawsuit”), which Lawsuit triggered Tenant’s and the Guarantor’s obligations to indemnify the Landlord pursuant to Section 10.1.3 of the Lease and Section 365(d)(3) of the Bankruptcy Code.